

1 CHRISTOPHER J. CARR (CA SBN 184076)
Email: CCarr@mofo.com
2 SHAYE DIVELEY (CA SBN 215602)
Email: SDiveley@mofo.com
3 MORRISON & FOERSTER LLP
425 Market Street
4 San Francisco, California 94105-2482
Telephone: 415.268.7000
5 Facsimile: 415.268.7522

6 Attorneys for Petitioners
SCHELLINGER HOMES
7

8 BEFORE THE
9 STATE WATER RESOURCES CONTROL BOARD
10

11 IN THE MATTER OF THE PETITION OF
12 SCHELLINGER HOMES
13 California Regional Water Quality Control Board,
14 Central Valley Region
15

SWRCB OCC File No.

**PETITION FOR REVIEW AND
REQUEST FOR HEARING;
REQUEST FOR IMMEDIATE
STAY**

(Cal. Water Code § 13320; Cal. Code
Regs., tit. 23 §§ 2050 & 2053)

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1 **IV. STATEMENT OF REASONS WHY THE ACTION WAS INAPPROPRIATE AND**
2 **IMPROPER**

3 The Notice was inappropriate and improper because it is invalid on its face. The Notice
4 orders “effective immediately” that no new structures be connected to Lakeport’s collection
5 system. This makes the Notice a de facto cease and desist order. As the Notice was neither
6 adopted by a vote of the Regional Water Quality Control Board nor subject to proper public
7 comment and hearing, it cannot have the force and effect of a cease and desist. It is, thus, invalid
8 on its face and should be rescinded immediately.

9 The Notice is further improper because it was issued without proper evidentiary support.
10 The sewer connection prohibition is unnecessary, as Lakeport’s wastewater treatment system has
11 capacity to easily accommodate additional hook-ups. The Regional Board’s concerns with
12 operation of the plant have more to do with management and maintenance of the facility than
13 with capacity and overloading. As a result, the connection prohibition is overreaching and does
14 not address the alleged problems identified in the Notice or Draft Order.

15 Schellinger could not raise those objections before the Regional Board because, as
16 explained above, the Notice was issued by the Assistant Executive Director without a hearing or
17 an opportunity for Schellinger to make a submission with respect to the matters involved in the
18 challenged decision.

19 **V. MANNER IN WHICH PETITIONER IS AGGRIEVED**

20 Schellinger is an aggrieved person within the meaning of California Water Code section
21 13320 because the Regional Board’s action affects Schellinger’s ability to develop its land in
22 Lakeport. Schellinger is the developer of 95-unit single-family residential project known as
23 Parkside in Lakeport, California. The project, adjacent to Westside Community Park and located
24 on 20 acres of land, was approved by the City of Lakeport last year. Thus far, Schellinger has
25 received four building permits to build model homes for the development. As a result of the
26 Notice, the City of Lakeport is prohibited from issuing any further building permits for
27 Schellinger’s project, depriving Schellinger of its ability to use and develop its property.
28 Schellinger relied upon the existing wastewater treatment system capacity, in developing the

1 project and expended significant capital to develop and improve the land. This investment is only
2 recoverable if Schellinger is able to build and sell houses.

3 **VI. SPECIFIC ACTION REQUESTED BY PETITIONER**

4 Schellinger respectfully requests that the State Board immediately stay the effect of and
5 rescind the Notice. Schellinger reserves the right to further request any and all actions authorized
6 in California Water Code Section 13320.

7 **VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION**

8 **A. FACTUAL BACKGROUND**

9 The City of Lakeport Municipal Sewer District owns and operates a wastewater treatment
10 facility that serves approximately 5,150 residents. Under the facility's current waste discharge
11 requirements ("WDRs"), the facility has a permitted flow rate of 1.05 million gallons per day
12 ("mgd").

13 The Regional Board alleges Lakeport's facility has a history of sewage spills, in violation
14 of its WDRS. The Regional Board also claims that the facility's water balance shows that there is
15 inadequate storage or disposal capacity under both the permitted flow rate (1.05 mgd) and the
16 alleged current flow rate (0.64 mgd). Accordingly, on January 18, 2007, the Regional Board
17 issued a draft Cease and Desist Order directed at the facility. With the Draft Order, the Associate
18 Executive Director of the Regional Board issued a Notice for public hearing and comment. The
19 Notice included the following provision:

20 Effectively immediately, no new structures may connect to the
21 collection system except those authorized by a building permit (or
22 equivalent final local agency approval) issued prior to the date of
this notice.

23 Notice at 1. The public hearing on the Draft Order is scheduled for March 15-16, 2007.

24 **B. ARGUMENT**

25 **1. The Notice Operates as an Improper Cease and Desist Order**

26 Under California Water Code section 13301,

27 [w]hen a regional board finds that a discharge of waste is taking
28 place, or threatening to take place, in violation of requirements or
discharge prohibitions prescribed by the regional board or the state
board, the board may issue an order to cease and desist and direct

1 that those persons not complying with the requirements or
2 discharge prohibitions (a) comply forthwith, (b) comply in
3 accordance with a time schedule set by the board, or (c) in the event
 of a threatened violation, take appropriate remedial or preventive
 action.

4 Cal. Water Code § 13301. In the case of a community sewer system, a regional board, in a cease
5 and desist order, may also “restrict or prohibit the volume, type, or concentration of waste that
6 might be added to that system by dischargers who did not discharge into the system prior to the
7 issuance of the cease and desist order.” *Id.* Such orders “may be issued directly by a board, after
8 notice and hearing.” *Id.* Only the regional board can issue a cease and desist order; such power
9 cannot be delegated to the executive director. Cal. Water Code § 13223(a)(3). Cease and desist
10 orders only become “effective and final upon issuance thereof.” Cal. Water Code § 13303.

11 Here, the Notice purports to immediately prohibit any new connections to the sewer
12 system. Notice at 1. By “restrict[ing] . . . the waste that might be added to that system,” the
13 Notice is, in effect, operating as a cease and desist order. Cal. Water Code § 13301. However,
14 this *de facto* cease and desist order did not comply with any of the normal procedural
15 requirements for the issuance of a cease and desist order. The Notice was issued by the assistant
16 executive director, not the regional board. *See id.* The Notice was not subject to notice and a
17 hearing. *Id.* The public was not given the opportunity to comment or participate before the
18 prohibition took immediate effect. *See id;* *see also* Cal. Gov’t Code § 11425.10 (outlining the
19 Administrative Adjudication Bill of Rights). Because the Notice failed to comply with these
20 basic requirements of the Water code, it is void on its face.

21 This complete failure to follow the required procedures for issuing a cease and desist
22 order is exasperated by the far-reaching effects of the Notice. As explained above, Schellinger
23 justifiably relied upon the existing capacity and permitted flow rate in developing the project and
24 expended significant capital to develop and improve its property. This investment is only
25 recoverable if Schellinger is able to build and sell houses. The Notice completely deprives
26 Schellinger of its ability to develop its property, without any prior opportunity for Schellinger to
27 comment on the impact of the prohibition on its business or to present evidence to the Regional
28

1 Board that the connections for its project will cause no harm. This is a violation of Schellinger's
2 fundamental due process rights and, accordingly, the Notice is improper and inappropriate.

3 **2. The Notice and Draft Order Lack Evidentiary Support**

4 In addition to being illegal, the Notice, and, to the extent it relies upon, the Draft Order,
5 are without evidentiary support and, thus, the prohibition is improper and inappropriate.

6 While California Water Code section 13301 provides that in "the event of an existing or
7 threatened violation of a waste discharge requirement in the operation of a community sewer
8 system, a cease and desist order may restrict or prohibit the volume, type or concentration of
9 waste that might be added to the system," the Water Board may only take such action if
10 consistent with its police powers to take such measures necessary to protect the order, safety,
11 health, morals and general welfare of society. For this reason, a cease and desist order can only
12 prohibit "connection[s] that might constitute a menace to health or otherwise threaten to degrade
13 the environment shared by the community as a whole." *Morshead v. Cal. Reg'l Water Quality*
14 *Control Bd.*, 45 Cal. App. 3d 442, 449-50 (1975).

15 Here, the prohibition goes beyond what is necessary to protect the environmental health of
16 the community. A prohibition on new sewer connections may be permissible when the cause of
17 the alleged violation is the overloading of the system. *See, e.g., id.* at 446 (concluding a cease
18 and desist order prohibiting new connections was proper "on the basis [that] corrective measures
19 taken by the district [were needed] to reduce the overloading of their facilities"). However,
20 neither the Notice nor the Draft Order says this. Rather, the Draft Order states that the "currently
21 permitted" flow rate is 1.05 mgd. Draft Order at 2. The Draft Order goes on to note that from
22 May to September 2006, the average dry weather flow ranged from 0.38 to 0.64 mgd. *Id.* These
23 amounts fall well within the currently permitted flow rate. *Id.*

24 The Draft Order does not claim otherwise, but instead states that as of September 2006,
25 "there is adequate storage capacity for an average dry weather flow of 0.57 mgd." *Id.* However,
26 even using this balance capacity, it is not clear that the current flow amounts exceed capacity. As
27 stated above, the Draft Order concludes that from May to September 2006, the average dry
28 weather flow ranged from 0.38 to 0.64 mgd. This is a wide range and the Draft Orders fails to

1 explain when the alleged 0.64 mgd flow measure occurred or how often the average flow
2 exceeded the 0.57 mgd that the system allegedly has capacity to store.

3 Moreover, the Draft Order fails to draw any connection between this alleged capacity
4 issue and any alleged unlawful spill or discharge. None of the alleged spills appears to be
5 connected in anyway to an incident when storage capacity was exceeded. All of the violations
6 cited in the Draft Order can be attributed to the maintenance of the old collection system, lack of
7 advanced planning and unusual weather conditions; not one had to do with plant capacity.
8 Indeed, over the past six years, only one such violation occurred at the treatment plant and that
9 could be attributed to open cleanouts. As a result, it does not appear that the connections
10 prohibition is necessary to reduce the overloading of the system when it cannot even be said that
11 the system was, in fact, overloaded.

12 Even if the Draft Order could be construed as concluding that overloading the system was
13 the cause of violations of the applicable waste discharge requirements, this conclusion is not
14 supported by substantial evidence. *See Laurel Heights Improvement Ass'n v. Regents of Univ. of*
15 *Cal.*, 47 Cal. 3d 376, 393 (1988). To be valid, an agency decision must be based on "enough
16 relevant information and reasonable inferences from the information that a fair argument can be
17 made to support a conclusion." *Id.* The Draft Order lacks such basis.

18 As explained below, there is no evidentiary support for concluding that the "current flow
19 rate" is 0.64 mgd, which is the basis for the connections prohibition. Draft Order at 2, 9. The
20 Draft Order fails to explain when this measurement was taken or whether other months' flow
21 rates were of similar quantities (this is questionable given that the average dry weather flow
22 ranged from 0.38 mgd to 0.64 mgd). As a result, it is improper for the Notice and the Draft Order
23 to use this flow rate, without evidentiary support, as a basis for prohibiting all future sewer
24 connections.

25 Not that there could be substantial evidence to support such a conclusion. The City of
26 Lakeport prepared a report that indicates that the average daily water flow over the past three
27 years was either 0.427 mgd or 0.408 mgd (depending on the method of measurement). The Pace
28 report (which the Draft Order relies upon to conclude the existing capacity is only 0.58 mgd)

1 reaches a similar conclusion, putting the average daily water flow at 0.48 mgd for the past six
2 years. As a result, the existing system has a minimum *unused* capacity of approximately 0.09
3 mgd. This strongly suggests that not only was the 0.64 mgd used in the Notice and Draft Order a
4 complete anomaly and not indicative of the current flow rate for the system, but also shows that a
5 complete prohibition on sewer connections is not supported by the evidence in the record.

6 Here, the capacity and flow rate analysis prepared by the City of Lakeport and provided to
7 the Water Board demonstrates ample capacity to accommodate additional connections. For
8 example, Schellinger's Parkside project, at total build-out, would add only about 0.02 mgd to the
9 system over the course of the next four years. This would be easily handled under the most
10 conservative estimate of unused capacity of 0.09 mgd. Accordingly, there is no reasonable basis
11 for prohibiting all connections to the system.

12 In sum, the Notice is based on misconceptions of the causes of the alleged violations and
13 the existing flow and capacity of the waste water system. The Notice should be rescinded
14 immediately.

15 **VIII. LIST OF INTERESTED PARTIES**

16 Schellinger has contacted the Regional Board for information on other interested parties.
17 As of the time of filing this petition, the Regional Board does not appear to have an available
18 list of designated or interested parties. Based on the information in the Notice and Draft Order,
19 and in abundance of caution, Schellinger has identified and has served this petition on the
20 following interested parties:

21 Mark Brannigan
22 City of Lakeport Municipal Sewer District
23 City of Lakeport Corporation Yard
24 591 Martin Street
25 Lakeport, CA 95453

26 Richard Knoll
27 Acting City Manager
28 Lakeport Community Development Department
225 Park Street
Lakeport, CA 95453

1 Scott Schellinger
2 Schellinger Homes
3 1270 Airport Blvd.
4 Santa Rosa, CA 95403

5 **IX. STATEMENT THAT COPIES OF PETITION HAVE BEEN SENT TO THE REGIONAL**
6 **BOARD**

7 Copies of this petition have been served on the Central Valley Regional Water Quality
8 Control Board. Please see the attached proof of service.

9 **X. REQUEST FOR PREPARATION OF THE ADMINISTRATIVE RECORD.**

10 A true and correct copy of Schellinger's request to the Regional Board for preparation of
11 the administrative record is attached hereto as **Exhibit B**.

12 **XI. REQUEST FOR HEARING**

13 Schellinger requests that the State Board hold a hearing in this matter.

14 **XII. STATEMENT OF ADDITIONAL EVIDENCE**

15 Schellinger requests that it be permitted to provide the following evidence, which was
16 available, but not presented to the Regional Board. The reason why it was not presented to the
17 Regional Board is that the Notice being appealed by Schellinger was issued by the Assistant
18 Executive Director without a hearing or an opportunity for Schellinger to make a submission with
19 respect to the matters involved in the challenged decision. Additional evidence includes:

- 20 • Economic harm to Schellinger as a result of the Notice and the delay or prohibition on
21 construction.
- 22 • The importance, economically, to Schellinger of its ability to develop the houses in this
23 particular project.
- 24 • The scientific flaws and unreasonableness associated with the connections prohibition in
25 the Notice.

1 Respectfully Submitted,

2
3 Dated: February 20, 2007

CHRISTOPHER J. CARR
SHAYE DIVELEY
MORRISON & FOERSTER LLP

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6 By:


Christopher J. Carr

7 Attorneys for Petitioners
8 SCHELLINGER HOMES
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I. FAILURE TO GRANT THE STAY WILL RESULT IN SUBSTANTIAL HARM TO SCHELLINGER

Furthermore, the prohibition on sewer connections, as required by the Notice, will impose significant financial hardship on Schellinger. As explained in the accompanying declaration of Scott Schellinger, Schellinger is the developer of 95-unit single-family residential project known as Parkside in Lakeport, California. The project, adjacent to Westside Community Park and located on 20 acres of land, was approved by the City of Lakeport last year. Thus far, Schellinger has conducted earthmoving activities, constructed roads and storm drains, and extended utilities to the building site. Schellinger has also received four building permits and constructed the model homes for the development.

PETITION AND REQUEST FOR IMMEDIATE STAY
sf-2271239

1 costs, which, depending upon market conditions and other circumstances, may not be recoverable
2 by Schellinger in the future. Because the connection prohibition in the Notice is already in effect,
3 these costs will be immediately borne by Schellinger and will continue to be borne by Schellinger
4 during the pendency of its Petition.

5 **II. INTERESTED PERSONS AND THE PUBLIC INTEREST WILL NOT BE SUBSTANTIAL**
6 **HARMED IF A STAY IS GRANTED**

7 The sewer connections prohibition is unnecessary and no public harm will result if it is
8 stayed. There is ample capacity in the present wastewater system to accommodate Schellinger's
9 Parkside project. The City of Lakeport prepared a report that indicates that the average daily
10 water flow over the past three years was either 0.427 mgd or 0.408 mgd (depending on the
11 method of measurement). The Pace report (which the Draft Order relies upon to conclude the
12 existing capacity is only 0.58 mgd) reaches a similar conclusion, putting the average daily water
13 flow at 0.48 mgd for the past six years. As a result, the existing system has a minimum *unused*
14 capacity of approximately 0.09 mgd.

15 Here, the capacity and flow rate analysis prepared by the City of Lakeport and provided to
16 the Water Board demonstrates ample capacity to accommodate additional connections. For
17 example, Schellinger's Parkside project, at total build-out, would add only about 0.02 mgd to the
18 system over the course of the next four years. This would be easily handled under the most
19 conservative estimate of unused capacity of 0.09 mgd. Accordingly, there is no reasonable basis
20 for prohibiting all connections to the system. Interested persons and the public interest would not
21 be harmed by a stay of the Notice.

22 **III. SUBSTANTIAL QUESTIONS OF FACT AND LAW EXIST**

23 The central question to be decided in this Petition is whether the Assistant Executive
24 Director of the Regional Board can issue a complete and open-ended prohibition on new building
25 permits without the requisite notice and hearing. This issue presents substantial concerns of due
26 process and the proper exercise of administrative powers. A stay will permit the time needed to
27 adequately and fully address these questions and others regarding the underlying factual and legal
28 bases for the Notice.

1 IV. CONCLUSION

2 For all the foregoing reasons, Schellinger respectfully requests that the State Water
3 Resources Control Board grant a stay of the effect of the Notice. Schellinger requests that the
4 stay remain in effect until at least ten days after formal resolution of this Petition.

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6 Respectfully Submitted,

7 Dated: February 20, 2007

8 CHRISTOPHER J. CARR
9 SHAYE DIVELEY
10 MORRISON & FOERSTER LLP

11 By: 
12 Christopher J. Carr

13 Attorneys for Petitioners
14 SCHELLINGER HOMES
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Exhibit A

Exhibit A



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board Central Valley Region



Arnold
Schwarzenegger
Governor

Sacramento Main Office

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

18 January 2007

Mark Brannigan
City of Lakeport Municipal Sewer District
City of Lakeport Corporation Yard
591 Martin Street
Lakeport, CA 95453

CERTIFIED MAIL
7005 1160 0004 0127 2879

DRAFT CEASE AND DESIST ORDER AND CONNECTION RESTRICTION, CITY OF LAKEPORT MUNICIPAL SEWER DISTRICT, CITY OF LAKEPORT WASTEWATER TREATMENT FACILITY, LAKE COUNTY

Due to the City of Lakeport Municipal Sewer District's (Discharger's) violations of Waste Discharge Requirements (WDRs) Order No. No. 98-207, Regional Water Board staff has prepared the enclosed draft Cease and Desist Order (CDO). The draft Order sets forth an enforceable scope and schedule for completion of technical studies to determine solutions for the violations of the WDRs. This draft Order also prohibits new connections to the Wastewater Treatment Facility because the Discharger's water balance shows that there is inadequate storage capacity under the permitted flow rate of 1.05 million gallons per day (mgd) as well as the current flow rate of 0.64 mgd. This connection restriction would apply to entities who have not been issued a building permit prior to the date of the Notice of Public Hearing.

Any comments or evidence you may have concerning the enclosed draft Order must be submitted to this office by **18 February 2007**. The Regional Water Board will consider adoption of this Order at its 15/16 March 2007 meeting.

If you have any questions or wish to meet to discuss the draft Order, please call Guy Childs at (916) 464-4648.

- Original Signed by -
MARK R. LIST, P.G., Chief
Waste Discharge to Land Unit

Enclosures: Draft Cease and Desist Order and Connection Restriction
Notice of Public Hearing

cc w/o enc: Ray Ruminski Lake County Environmental Health Department, Lakeport
Richard Knoll, Lakeport Community Development Department, Lakeport
Lake County Community Development Department, Lakeport
Thomas Warnock, Pace Civil, Inc., Redding

California Environmental Protection Agency



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board Central Valley Region



Arnold
Schwarzenegger
Governor

Sacramento Main Office

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

18 January 2007

Via facsimile and U.S. Mail

Richard Knoll, Acting City Manager
Lakeport Community Development Department
225 Park Street
Lakeport, CA 95453

NOTICE OF DRAFT CONNECTION RESTRICTION, CITY OF LAKEPORT MUNICIPAL SEWER DISTRICT, CITY OF LAKEPORT WASTEWATER TREATMENT FACILITY, LAKE COUNTY

As described in the enclosed Notice of Public Hearing, the Regional Water Quality Control Board will consider adoption of a Cease and Desist Order and Connection Ban for the City of Lakeport Municipal Sewer District at its 15/16 March 2007 meeting. Pursuant to California Water Code Section 13301 and Title 23, California Code of Regulations, Section 2244(b), this draft Order contains a connection restriction that would apply to entities who have not been issued a building permit prior to the date of the Notice of Public Hearing.

Effective immediately, no new structures may connect to the City of Lakeport's Municipal Sewer District's collection system except those authorized by a building permit (or equivalent final local agency approval) issued prior to the 18 January 2007 Notice of Public Hearing.

Limited additional exceptions apply, as follows:

- a. Projects for which building permits were issued prior to the 18 January 2007 Public Hearing Notice.
- b. Projects which normally do not require a building permit and for which construction commenced prior to the 18 January 2007 Public Hearing Notice.
- c. Projects which would eliminate discharges from existing dwellings which have failing systems whose threat to water quality or public health is greater than that of the existing collection system.
- d. Projects that would alleviate an extreme public hardship or public health problem.

Please contact Mark List at (916) 464-4732 if you have any questions.

- Original Signed by -

WENDY WYELS
Environmental Program Manager

Enc: 18 January 2007 Notice of Public Hearing

cc : Ray Ruminski Lake County Environmental Health Department, Lakeport
Mark Brannigan, City of Lakeport Municipal Sewer District, Lakeport
Lake County Community Development Department, Lakeport
California Building Industry Association, Sacramento
Thomas Warnock, Pace Civil, Inc., Redding

California Environmental Protection Agency

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114

PUBLIC HEARING
concerning
CEASE AND DESIST ORDER AND CONNECTION RESTRICTION
for

**CITY OF LAKEPORT MUNICIPAL SEWER DISTRICT
WASTEWATER TREATMENT FACILITY
LAKE COUNTY**

The City of Lakeport Municipal Sewer District (Discharger) owns and operates a wastewater treatment facility that serves approximately 5,150 residents in the City of Lakeport. The wastewater system provides secondary treatment of domestic wastewater in a baffled pond system and then wastewater is sent to a storage reservoir. Disinfected wastewater is discharged to land application areas via spray and flood irrigation methods.

The Discharger's wastewater system is regulated by Waste Discharge Requirements (WDRs) Order No. 98-207 which allows a monthly average discharge not to exceed 1.05 million gallons per day (mgd). The Discharger's wastewater system has a history of sewage spills that have resulted in violations of the WDRs. In addition, the Discharger's water balance, which was based on 100-year annual precipitation, shows that there is inadequate reservoir storage or disposal capacity under the permitted flow rate of 1.05 mgd, as well as under the current flow rate of 0.64 mgd.

Because the volume of influent exceeds the amount that the Discharger's wastewater system is physically capable of storing and disposing, the proposed Cease and Desist Order (CDO) prohibits new connections to the sewage collection system. Upon adoption of the CDO, the connection prohibition will apply retroactively as specified in Title 23, California Code of Regulations, Section 2244.1(a).

Effective immediately, no new structures may connect to the collection system except those authorized by a building permit (or equivalent final local agency approval) issued prior to the date of this notice. Limited additional exceptions apply as described in the draft CDO.

A **formal** public hearing concerning this matter will be held during the Regional Board meeting that is scheduled for:

DATE: 15/16 March 2007
TIME: 8:30 a.m.
PLACE: Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

The designated parties for this hearing are as follows:

- Staff of the Central Valley Regional Water Quality Control Board
- Staff of the City of Lakeport Municipal Sewer District

Only designated parties will have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses; to impeach any witness; and to rebut the evidence against him or her. All other persons wishing to testify or provide comments are interested persons and not designated parties. Such interested persons may request status as a designated party for purposes of this hearing by submitting such request in writing to the Board no later than **18 February 2007**. The request must explain the basis for status as a designated party and in particular how the person is directly affected by the discharge.

Persons wishing to comment on this noticed hearing item must submit testimony, evidence, if any, and/or comments in writing to the Regional Water Board no later than **18 February 2007**. **Written evidence or comments submitted after 18 February 2007 will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party.**

All designated parties and interested persons may speak at the Regional Water Board meeting, and are expected to orally summarize their written submittals. Oral testimony and cross-examination will be limited in time by the Board Chair.

Anyone having questions on the proposed CDO should contact Guy Childs at (916) 464-4648. Interested parties may download the proposed Order and related documents from the Regional Water Board's Internet website at <http://www.waterboards.ca.gov/centralvalley/tentative/>.

Copies of these documents can also be obtained by contacting or visiting the Regional Water Board's office at 11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114 weekdays between 8:00 a.m. and 5:00 p.m.

The procedures governing Regional Water Board meetings may be found at Title 23, California Code of Regulations, Section 647 et seq. and are available upon request. Hearings before the Regional Water Board are not conducted pursuant to Government Code section 11500 et seq. The procedures may be obtained by accessing http://www.waterboards.ca.gov/water_laws/. Information on meeting and hearing procedures is also available on the Regional Water Board's website at http://www.waterboards.ca.gov/centralvalley/board_meetings/mtgprocd.html or by contacting any one of the Board's offices. Questions regarding such procedures should be directed to Ms. Kiran Lanfranchi-Rizzardi at (916) 464-4839.

The hearing facilities will be accessible to persons with disabilities. Individuals requiring special accommodations are requested to contact Ms. Kiran Lanfranchi-Rizzardi at (916) 464-4839 at least 5 working days prior to the meeting. TTY users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922.

NOTICE OF PUBLIC HEARING
CITY OF LAKEPORT MUNICIPAL SEWER DISTRICT
WASTEWATER TREATMENT FACILITY
LAKE COUNTY

-3-

Please bring the above information to the attention of anyone you know who would be interested in this matter.

- Original Signed by -

Kenneth D. Landau, Assistant Executive Officer

18 January 2007

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO.

CEASE AND DESIST ORDER AND CONNECTION RESTRICTION

FOR
CITY OF LAKEPORT MUNICIPAL SEWER DISTRICT
WASTEWATER TREATMENT FACILITY
LAKE COUNTY

TO CEASE AND DESIST
FROM DISCHARGING CONTRARY TO REQUIREMENTS

The Regional Water Quality Control Board, Central Valley Region, (hereafter referred to as "Regional Water Board") finds that:

1. Waste Discharge Requirements (WDRs) Order No. 98-207, adopted by the Regional Water Board on 23 October 1998, prescribes requirements for the wastewater system owned and operated by the City of Lakeport Municipal Sewer District (hereafter referred to as "Discharger"). Revised Monitoring and Reporting Program No. 98-207 was issued on 22 April 2004.
2. The Discharger's wastewater treatment and storage system is on the northwestern shore of Clear Lake in Section 1 of T13N, R10W, MDB&M. The facility is southwest of downtown Lakeport on the west side of Highway 29. Assessor's Parcel Numbers for the property are APN 007-003-43 and 46, and 005-035-06, 16 and 18.

Wastewater Treatment Facility

3. The WDRs prescribe requirements for the treatment and disposal of a monthly average dry weather flow not exceed 1.05 million gallons per day (mgd) and a maximum daily discharge not to exceed 3.8 million gallons.
4. The Wastewater Treatment Facility (WWTF) is comprised of a domestic wastewater collection system, a treatment facility, a storage reservoir, and disposal fields. The collection system consists of approximately 250,000 linear feet of sewer main and laterals and collects wastewater from 5,150 residents. The treatment system is designed to treat 1.05 mgd of domestic sewage in a baffled pond system. The effluent is disinfected to secondary standards prior to discharge to a 600 acre-foot storage reservoir (at two feet of freeboard) and to a land application area.
5. The Discharger states that the discharge from the storage reservoir is used to irrigate approximately 242 acres of pasture and open areas (land application areas). However, the WDRs state that the land application area consists of 340 acres. The Discharger states that 211 acres are spray irrigated and 31 acres are flood irrigated. The land application area is divided into 31 fields. On a typical irrigation day, between nine and ten fields are irrigated on an alternating schedule over a 12-hour period. A different set of

irrigation fields are used each day over a three-day period.

Violations of the Waste Discharge Requirements

Spill Violations

6. Discharge Prohibition No. A.1 of WDRs Order No.98-207 states: *"Discharge of wastes to surface waters or surface water drainage courses is prohibited."*
7. Discharge Prohibition No. A.2 of WDRs Order No. 98-207 states: *"Bypass or overflow of untreated or partially treated effluent is prohibited."*
8. Since adoption of WDRs Order No. 98-207 on 23 October 1998, the Discharger has reported 64 spills from the collection system and 3 spills from the treatment system. Of these spills, 33 entered surface waters. The largest of these spills was partially treated wastewater that occurred over an 11 day period in April 2006 and was estimated between 3.6 and 6.6 million gallons. A description of these spills is presented as Attachment A of this Cease and Desist Order.
9. To prevent unauthorized discharges of wastewater to surface water and surface water drainage courses, it is appropriate to require a Spill Contingency Plan.

Storage Capacity Violations

10. Discharge Specification No. B.11 of the WDRs Order No. 98-207 states: *"Treatment ponds and the storage reservoir shall have sufficient capacity to accommodate allowable wastewater flow, design seasonal precipitation and ancillary inflow and infiltration during the nonirrigating season. Design seasonal precipitation shall be based on total annual precipitation using a return period of 100 years, distributed monthly in accordance with historical rainfall patterns. The effluent storage reservoir freeboard shall never be less than two (2.0) feet (measured vertically at the spillway) except during years equaling or exceeding the precipitation of a 100-year return period. Treatment ponds shall never have a freeboard of less than 2.0 feet (measured vertically)."*
11. Monthly self-monitoring reports show that the freeboard in the storage reservoir was less than two feet in April and May 2006.
12. The Discharger's 18 September 2006 water balance, prepared by a California Registered Engineer, shows that there is adequate storage capacity for an average dry weather flow (ADWF) of 0.57 mgd. However, at the currently permitted flow rate of 1.05 mgd, there is inadequate storage capacity. The water balance is based on 100-year annual precipitation data, 600 acre-feet of storage with two feet of freeboard, a beginning storage volume in October of each year of 100 acre-feet or less, and applying wastewater to 260 acres of disposal area. Staff's review of monthly monitoring reports shows that the monthly ADWF from May through September 2006 ranges from 0.38 to 0.64 mgd. Therefore, the water balance demonstrates that the Discharger does not have enough storage capacity for its permitted flow; nor does it have enough storage capacity for its

current wastewater flow. Both of these conditions are a violation of Discharge Specification No. B.11.

13. To ensure that influent flows are accurately measured, it is appropriate to require a flow meter calibration report.

Land Application Area Violations

14. Wastewater Reclamation Specification No. E.7 of the WDRs Order No. 98-207 states: *"The Discharger may not spray irrigate effluent during periods of precipitation and for at least 24 hours after cessation of precipitation or when winds exceed 30 mph."*
15. Monthly self-monitoring reports show that the Discharger has violated Wastewater Reclamation Specification No. E.7. During April 2006, rainfall occurred a total of four days and the Discharger applied wastewater to the land application areas via spray irrigation on these days. This discharge during precipitation events resulted in the discharge of wastewater to Clear Lake.

Groundwater Violations

16. Groundwater Limitations No. G.1 of the WDRs Order No. 98-207 states: *"The Discharger, in combination with other sources, shall not cause underlying groundwater to be degraded."*
17. The provisions of the WDRs and Revised Monitoring and Reporting Program (MRP) No. 98-207 require that the City of Lakeport install groundwater monitoring wells, sample the installed groundwater monitoring wells, and evaluate groundwater conditions related to the discharge of waste at the facility.
18. Five groundwater monitoring wells were installed at the WWTF and land application area in September 2004. Quarterly groundwater monitoring and sampling reports were submitted between November 2004 and December 2006. Review of the groundwater monitoring data shows that the discharge appears to have degraded groundwater when comparing the upgradient background well to the downgradient wells. Concentrations of Total Dissolved Solids (TDS), boron, iron, manganese, magnesium, potassium, sodium, and chloride in the downgradient wells are higher than those in the upgradient background well. The discharge of waste from the City of Lakeport's WWTF has violated the Groundwater Limitations of WDRs Order No. 98-207. Therefore, it is appropriate to require the Discharger to complete a Background Groundwater Quality Study Analysis and to evaluate Best Practicable Treatment Control Measures to reduce degradation to below water quality objectives.

Previous Enforcement

19. Since issuance of the current WDRs in October 1998, Regional Water Board records indicate that four Notices of Violations (NOVs) have been issued for multiple wastewater spills. These NOVs are summarized as follows:

- a. An NOV was issued on 15 January 2004 for a 66,000 gallon raw sewage spill that occurred on 27 October 2003 and for five other spills ranging from 25 to 100 gallons that occurred in November and December 2003. The NOV required the submittal of a *Sanitary Sewer System Operation, Maintenance, Overflow Prevention, and Response Plan* (SSS Plan). The SSS plan was received by Regional Water Board staff on 4 June 2004.
- b. An NOV was issued on 8 February 2006 for a raw sewage spill estimated at approximately 500 gallons that occurred on 31 December 2005 and the Discharger's inability to report the spill as required by the Standard Provisions and Reporting Requirements of the Waste Discharge Requirements. The spill was caused by (i) excessive amounts of rain accompanied with inflow and infiltration (I/I), (ii) fats, oils, and greases in the main sewer line, (iii) privately operated sewer pumps from nearby motels that are connected to the sewer main, (iv) and an undersized section of the sewer main. Because the Discharger did not report the spill as required by the Standard Provisions and Reporting Requirements, the NOV required the submittal of a technical report describing how they will change internal procedures such that all spills will be reported as required by the Standard Provisions. The NOV also required the submittal of a report showing the repairs that had been completed to reduce the I/I in the spill area, a copy of the ordinance submitted to City of Lakeport regarding the reduction of fats, oils, and grease from nearby restaurants connected to the main sewer line, results of the investigation regarding the operation of the privately operated sewer pumps during periods of heavy rains, and a timeline for the replacement of the undersized section of sewer main. The Discharger has submitted the required information.
- c. An NOV was issued on 3 August 2006 for a discharge of wastewater into Clear Lake from the recapture reservoir. The discharge occurred between 13 and 24 April 2006 and was estimated to be between 3,600,000 and 6,600,000 gallons of partially treated wastewater. The Discharger based the estimate spilled on approximately 15 to 25 percent of the total amount of wastewater (24 million gallons) that was discharged to the spray field during this period. The primary causes of the spill were the inflow from the Willow Point area, the heavy rains that occurred during this period, the lack of storage capacity, and the inability to allow the land application area to dry prior to irrigation. The NOV required the Discharger to submit a water balance prepared by a California Registered Engineer evaluating the wastewater treatment system's capacity and ability of the ponds to maintain two feet of freeboard on a month-by-month basis. The technical report and water balance prepared by a California Registered Engineer were received on 18 September 2006.
- d. On 9 January 2007, an NOV was issued for two raw sewage spills that occurred on 26 October and 9 November 2006. The October spill was estimated to be between 100 and 200 gallons, and was from an overflowing manhole. The spill entered a flowing storm drain and eventually Clear Lake and was caused by a grease blockage in the sewer pipe. The Discharger states that the sewer pipe was cleaned of grease deposits and video surveyed. The Discharger indicates that this section

of sewer pipe will be inspected by the 3rd quarter 2007. The November spill, estimated at 90 gallons, occurred from an overflowing manhole located near the Clear Lake High School. The spill did not enter a surface water drainage course. The spill was caused by a blockage in the sewer line from a large mass of wet paper products possibly from vandalism. A video inspection conducted by the Discharger on 9 November 2006 indicated that there were no defects within the manhole or sewer mains.

Response to April 2006 Spill and Notice of Violation

20. On 10 August 2006, the Discharger requested a meeting with Regional Water Board staff to discuss the 3 August 2006 NOV and any additional enforcement action under consideration. The meeting with staff was held on 5 September 2006, and a subsequent meeting was held with the Executive Officer on 6 October 2006. The following information was presented at each meeting and in follow-up correspondence.

The Discharger states that the main cause of the April 2006 spill was the continuous rainfall that occurred beginning in December 2005 and the inability to apply wastewater to the land application area. In addition, the Discharger states that storm water runoff into the tailwater diversion ditch from the surrounding areas may have contributed to the increased volumes to the storage reservoir. In addition, the Discharger submitted the following information:

- In response to increased flows at Lift Station C, the City of Lakeport staff inspected the Willow Point RV Park on 1 March 2006 and found approximately 20 uncapped private sewer cleanouts. The RV Park is immediately adjacent to Clear Lake.
- Extensive flooding occurred along the shores of Clear Lake and in the Willow Point RV Park from 6 March through 27 April 2006. This flooding allowed approximately 65 acre-feet of excess water to enter the collection system through the uncapped sewer cleanouts.
- The majority of the open sewer cleanouts were brought to grade and capped with watertight covers on 24 March 2006 after utilizing the services of the City of Lakeport Building Department, the California Housing and Community Development, and Lake County Environmental Health Department. Wastewater flows at the nearby Lift Station No. 6 have since been reduced. However, follow-up site investigations on 18 and 22 August 2006 indicate that the Recreation Vehicle (RV) Dump Station cleanout remains open and is subject to future flooding. The inspection also found that large amounts of rock and gravel were placed onsite to prevent future flooding of the area.
- The City of Lakeport will monitor the repairs made to the sewer cleanouts through inspections and take flow measurements both upstream and downstream of the Willow Point RV Park.

- The owner of the Willow Point RV Park has received citations from the City of Lakeport for two recent sewer spills. One of the sewer spills was discovered within five feet of the lake level on 1 March 2006. The Discharger states that the Lake County Department of Environmental Health and the California Department of Housing and Community Development were notified of the spill.

The Discharger believes that the impact to beneficial uses from the millions of gallons of wastewater spilled into Clear Lake was negligible because (a) the wastewater was re-disinfected prior to discharge and (b) the heavy rains diluted any constituents of concern. In addition, the Discharger took action to prevent some wastewater from entering Clear Lake. Approximately 597,000 gallons of partially treated wastewater was transported by sewage pumper trucks to the Southeast Regional Wastewater Treatment Facility during a seven-day period from 13 through 21 April 2006 at a cost of approximately \$96,000.

Inflow/Infiltration Assessment

21. Provision H.3.a of the WDRs requires that, in order to resolve capacity issues related to high inflow and infiltration (I/I), the Discharger was to submit an I/I assessment report by 1 June 1999. This report was not submitted on time.
22. In a 10 May 2000 inspection report, Regional Water Board staff informed the Discharger that the wastewater treatment and disposal facilities appeared well-operated and maintained. However, the report also stated that the collection system had significant inflow/infiltration (I/I) problems (documented in Attachment A to this Order). To address these problems, the Discharger was reminded that the WDRs required submittal of an I/I assessment report, and that it should detail the City's plan and schedule for implementing a program to define the nature and extent of I/I in the collection system, establish cost effective measures for reduction of I/I sources, and perform ongoing I/I prevention and control. The report was received in November 2000, and included the following:

Task	Target Completion Date	Status
Determine the strategy to mitigate the I/I problem	16 October 2001	Completed
Finalize the analysis of the new sewer rates and coordinate the rate increase with the Lake County Sanitation District rate increase.	10 January 2001	Completed
Implement the rate increase with Proposition 218 requirements.	31 March 2001	Completed
Hire additional staff for I/I issues, and obtain necessary monitoring equipment and provide training.	15 June 2001	Hired two additional staff in March and April 2004.

Task	Target Completion Date	Status
Conduct initial smoke testing, provide initial update for mapping the sewer collection system, conduct base flow monitoring, sewer testing and miscellaneous repair activities.	15 October 2001	Smoke testing began in June 2004 (as of June 2005 approximately 65 percent of the lines inspected). Geographical Information System (GIS) mapping of sewer manholes (2004/2005).
Issue repair notices and work orders for defective collection system facilities.	30 November 2001	Ongoing
Initiate wet weather flow monitoring	1 December 2001	Magnetic flow meters arrived in June 2004 and have been installed at four lift stations (Lakeshore Blvd., Rose Ave., Martin Street, and C Street). A fifth magnetic flow meter is planned to be installed at the Linda Lane lift station.
Conduct ongoing flow monitoring, mapping, and repair activities to the sewer collection system.	Ongoing	Ongoing

23. The Discharger states that a concerted effort has been made towards an I/I Reduction Program with the following actions having been taken: (a) aerial mapping of the city in 1991, 2002, 2006, (b) GIS mapping of utilities from 1999 to present, (c) inventory of sewer utilities from 2001 to present, (d) creation of the I/I Department in 2003, (e) providing a GIS utility atlas to field crews in 2004, (f) completion of the sewer spillage database in 2005, (g) physical inspection of all sewer manholes from 2001 to present, (h) video inspection of sewers from 2001 to present, (i) purchase of magnetic flow meters for sewage lift stations in 2004, (j) restoration of 10 sewer manholes in 2004, 21 manholes in 2005, and 20 manholes in 2006, and (k) the installation of 44 sewer manhole covers in 2005.
24. The Discharger's 18 September 2006 technical report states that historically, the wastewater collection system has experienced substantial inflow and infiltration; however, the I/I Reduction Program was created in 2003 to identify the problem areas and repair the collection system. The Discharger states that an average of \$225,000 per year has been spent on the I/I Reduction Program.
25. In addition, the Discharger indicates that it has recently contracted with a consultant to prepare a Sewer Master Plan. The Plan will address both collection system and treatment system improvements. The estimated cost to complete the plan is \$50,000 and the scheduled completion date is 13 August 2007. In summary, the Master Plan will

contain the following: (a) development of a service area and system map, (b) an inflow/infiltration flow monitoring program, (c) development of a hydraulic model, (d) an evaluation of, and recommended improvements to the wastewater treatment, storage and disposal system to accommodate the next 20 years of growth, (e) cost estimates associated with those recommended improvements, and (f) development of a sewer master plan map.

26. To ensure that a mechanism is in place to provide adequate funding needed for the treatment, storage and disposal capacity necessary to consistently comply with the permit conditions, it is appropriate for the Discharger to submit a Revenue Plan for existing and future expansion of the City of Lakeport's WWTF.
27. To ensure that adequate staffing is available to perform operation and maintenance of the wastewater treatment and disposal system to comply with the WDRs, it is appropriate that the Discharger submit a Staffing Analysis Report.
28. On 2 May 2006, the State Water Board adopted Statewide General Waste Discharge Requirements For Sanitary Sewer Systems General Order No. 2006-0003-DWQ (General Order). The General Order requires all public agencies that own or operate sanitary sewer systems greater than one mile in length to comply with the Order. The Discharger's collection system exceeds one mile in length, therefore the General Order is applicable. Regional Water Board staff has no record that the Discharger has complied with this Order.

Sewer Connection Restriction

29. Regional Water Board staff's review of recently submitted California Environmental Quality Act (CEQA) documents indicates that future developments are being proposed in and around the City of Lakeport. This future development would result in the creation of new homes and businesses which would generate wastewater and thus require treatment and disposal by the City of Lakeport's Municipal Sewer District's Wastewater Treatment Facility. A summary of CEQA documents that have been received are as follows:
 - a. On 7 September 2006, Regional Water Board staff provided comments to the Mitigated Negative Declaration for the City of Lakeport's Parallel Drive Annexation Project. The proposed project consists of a 157-acre park located along the western side of Parallel Drive, west of Highway 29, to be annexed to the City of Lakeport for planned growth of the community. The Mitigated Negative Declaration states that the proposed project would not directly result in the production of additional wastewater. However, future development could result in creation of new homes and businesses that would generate wastewater and thus require treatment and disposal by the City of Lakeport Municipal Sewer District. Regional Water Board staff directed that if the proposed project increases the monthly average dry weather discharge above the permitted flow, then a Report of Waste Discharge must be submitted.

- b. On 9 January 2007, Regional Water Board staff received a copy of a proposed Mitigated Negative Declaration from Lake County Community Development for review and comment. The project consists of the installation of a wastewater collection and distribution system to serve the county airport at Lamson Field and the existing and proposed facilities on the airport property. The wastewater treatment and disposal for the project would be handled through the City of Lakeport's WWTF.
- 30. A 28 December 2006 Lake County Record Bee newspaper article indicates there are proposed plans to construct a golf course and housing development on approximately 700 acres of land owned by the City of Lakeport. The proposed development would consist of approximately 600 single-family homes, multi-family homes and possibly some timeshares. The article states that the project would fund wastewater treatment plant improvements. Staff has not received any CEQA documents or other correspondence pertaining to this proposed project.
- 31. The Discharger's water balance shows that currently available treatment, storage and disposal capacity is 0.57 mgd. The maximum monthly average dry weather influent flow during 2006 was 0.64 mgd. Because the Discharger's water balance shows that there is inadequate storage capacity under the permitted flow rate of 1.05 mgd and under the current flow rate of 0.64 mgd, this Order prohibits new connections to the WWTP until adequate capacity is obtained.

Regulatory Considerations

- 32. As a result of the events and activities described in this Order, the Regional Water Board finds that the Discharger has caused or permitted waste to be discharged in such a manner that it has created, and continues to threaten to create, a condition of pollution or nuisance. The Regional Water Board also finds that the Discharger is discharging waste in violation of WDRs No. 98-207 as described in the above Findings.
- 33. The Regional Water Board's Water Quality Control Plan for the Sacramento and San Joaquin River Basins (Basin Plan) designates beneficial uses, includes water quality objectives to protect the beneficial uses, and includes implementation plans to implement the water quality objectives.
- 34. Surface water drainage from the facility is to Clear Lake. The beneficial uses of Clear Lake, as stated in the Basin Plan, are municipal and domestic supply; agricultural supply; industrial service supply; water contact recreation; noncontact water recreation; warm freshwater habitat, cold freshwater habitat; spawning, reproduction, and/or early development; and wildlife habitat.
- 35. The beneficial uses of underlying groundwater are municipal and domestic water supply, agricultural supply, industrial service supply, and industrial process supply.
- 36. Section 13301 of the California Water Code states in part: "When a regional board finds that a discharge of waste is taking place or threatening to take place in violation of requirements or discharge

prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action. In the event of an existing or threatened violation of waste discharge requirements in the operation of a community sewer system, cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to such system by discharges who did not discharge into the system prior to the issuance of the cease and desist order. Cease and desist orders may be issued directly by a board, after notice and hearing, or in accordance with the procedure set forth in Section 13302."

37. Section 13267(b) of the California Water Code states: " In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."
38. The Discharger owns and operates the facility subject to this Order. Monitoring reports and other technical reports required by this Order are necessary to assure compliance with WDRs Order No. 98-207 and revised MRP No. 98-207 to assure protection of public health and safety.
39. Title 23, California Code of Regulations, Section 2244(b) states: "Prohibitions or appropriate restrictions on additional discharges should be included in a cease and desist order if the further addition in volume, type, or concentration of waste entering the sewer system would cause an increase in violation of waste discharge requirements or increase the likelihood of violation of requirements."
40. The Regional Water Board finds that there is an existing and threatened violation of waste discharge requirements in the operation of a community sewer system because the volume of influent exceeds the amount the facility is physically capable of storing and disposing in compliance with Order No. 98-207. The Regional Water Board also finds that additional volume of wastewater entering the facility will cause an increase in violation of waste discharge requirements and, therefore, this Order prohibits new connections to the WWTF.
41. The issuance of this Order is an enforcement action by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations.
42. On _____, in Rancho Cordova, California, after due notice to the Discharger and all other affected persons, the Regional Water Board conducted a public hearing at which evidence was received to consider a Cease and Desist Order and Connection Restriction.

43. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board to review the action in accordance with Section 2050 through 2068, Title 23, California Code of Regulations. The petition must be received by the State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA, 95812-0100, within 30 days of the date on which the Regional Water Board action took place. Copies of the law and regulations applicable to filing petitions are available at www.waterboards.ca.gov/water_laws/index.html and also provided upon request.

IT IS HEREBY ORDERED that, pursuant to Sections 13301 and 13267 of the California Water Code, the City of Lakeport Municipal Sewer District, its agents, successors, and assigns, shall implement certain measures, and identify and implement facility improvements, in accordance with the scope and schedule set forth below to ensure long-term compliance with WDRs Order No. 98-207 or any revisions to those WDRs.

Each document submitted under this Order shall bear the following certification signed by the Discharger:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

1. With the exception of Discharge Specification No. B.1 of WDRs Order No. 98-207 (pertaining to the dry weather inflow to the wastewater treatment plant), the Discharger shall **immediately** comply with all aspects of WDRs Order No. 98-207.
2. Effective immediately, the average monthly dry weather inflow to the wastewater treatment plant shall not exceed 0.64 mgd (i.e., the flow generated in May 2006), and the annual inflow (measured from October through September) shall not exceed 912 acre-feet (approximately 298 million gallons).
3. By **1 June 2007**, the Discharger shall submit a *Flow Meter Calibration Report* that demonstrates that all flow meters used for determining compliance with the WDRs and this Order have been independently calibrated by a third party. The report shall also (a) provide standard procedures for plant personnel to use when taking and recording flow measurements and (b) provide a schedule for on-going meter calibration.
4. By **1 October of each year**, the volume of wastewater in the effluent storage reservoir shall not exceed 100 acre-feet.

Revenue Plan

5. By **1 June 2007**, the Discharger shall submit a *Revenue Plan* for all work and improvements needed to provide adequate treatment, storage, and disposal capacity for

existing and/or future expansion of the City of Lakeport's WWTF. The plan shall include the following:

- a. A detailed description of the scope and schedule of all planning, design, and construction, including improvements to existing facilities and construction of new facilities as needed to accommodate projected future influent flows over the next 15 years. A phased expansion plan may be proposed; and
- b. A preliminary capital cost estimate and a financing plan describing how the improvement project(s) will be funded.

Short Term Storage and Disposal Capacity Improvements

6. By **1 July 2007**, the Discharger shall submit and immediately implement a *Spill Contingency Plan* containing the interim measures necessary for preventing unauthorized discharges to surface water and surface water drainage courses from the WWTF. The Spill Contingency Plan shall remain in effect until all improvements to the WWTF are completed. The Spill Contingency Plan must, at a minimum, consider additional water conservation measures to reduce wastewater flows, provisions for transporting wastewater offsite for disposal, and provisions for increasing the capacity of the storage reservoir. The cost and funding mechanism for each contingency measure must be identified. The Spill Contingency Plan must identify the selected alternatives, and for each alternative, specify all necessary materials, staffing, and equipment required for implementation.
7. By **1 August 2007**, the Discharger shall submit a *Staffing Analysis Report* for the wastewater treatment, storage and disposal system. The analysis shall include a review of current staffing levels, allocation of staff tasks, an analysis of whether current staff allocation is adequate, and if necessary, describe the shortfalls and make recommendations for future staffing needs. If the analysis indicates additional staff are necessary, then the report shall also include a *Staffing Contingency Plan* describing the steps the Discharger shall take in the short term and long term to assure that it has enough staff to perform the necessary operation and maintenance activities associated with the wastewater storage and disposal system. If the analysis indicates additional staff are necessary, then the *Staffing Contingency Plan* shall also contain a proposed timeline for acquiring the necessary staff.
8. By **1 October 2007**, the Discharger shall finish construction of improvements to increase the storage and disposal capacity to allow for this Order's average dry weather inflow limit of 0.64 mgd, and shall submit a technical report documenting these improvements. The report shall contain a water balance to support the improvements. The water balance shall include consideration of at least the following:
 - a. Wastewater flows from all sources such as subsurface inflows, storm water run-on, and any inflow and infiltration from the collection system;
 - b. Local precipitation data (indicate what weather station was used to obtain the data, and indicate what the total annual precipitation is for average and 100 year annual

storm events, and show how that value was distributed throughout the year, by months, based on historical rainfall patterns);

- c. Infiltration and inflow;
- d. Local evaporation data;
- e. Measured evaporation data from any enhanced evaporation system;
- f. Projected percolation rates for the effluent storage reservoir; and
- g. Irrigation disposal rates that comply with the requirements of the WDRs.

Groundwater Evaluation

- 9. By **1 July 2007**, the Discharger shall submit a *Background Groundwater Quality Study and Degradation Assessment Report*. For each groundwater monitoring parameter/constituent identified in revised MRP No. 98-207, the report shall present a summary of all monitoring data and calculation of the concentration in background monitoring well(s). Determination of background quality shall be made using the methods described in Title 27, Section 20415(e)(10), and shall be based on data from at least 8 consecutive quarterly (or more frequent) groundwater monitoring events. For each monitoring parameter/constituent, the report shall compare the measured concentration in each compliance monitoring well with the proposed background concentration.
- 10. By **1 July 2007**, the Discharger shall submit a *BPTC Evaluation Workplan* that sets forth the scope and schedule for a systematic and comprehensive technical evaluation of the waste constituent(s) to determine whether additional best practicable treatment and control is necessary to establish that BPTC has been applied and consequent groundwater degradation minimized. The workplan shall contain an evaluation of each component of the wastewater treatment plant and propose a time schedule for completing the comprehensive technical evaluation of appropriate treatment and control for each waste constituent causing degradation. The schedule to complete the evaluation shall be as short as practicable, and shall not exceed one year.
- 11. By **1 July 2008**, the Discharger shall submit a *BPTC Evaluation Report* containing the results of the study described in Ordered Item No. 10. The report shall recommend improvements to the WWTF that will result in compliance with the Groundwater Limitations of WDRs Order No. 98-207.

Sewer System Master Plan

- 12. By **1 February 2008**, the Discharger shall submit a *Sewer System Master Plan* prepared by a California Registered Engineer that describes the facility improvements needed to:
 - a. Increase overall storage and disposal capacity as necessary to comply with a 100-year total annual precipitation event;
 - b. Provide enough wastewater storage and disposal capacity for current flows, as well as growth projected over the next 15 years;

- c. Prevent sanitary sewer overflows;
- d. Comply with pond freeboard requirements in the WDRs; and
- e. Address I/I (shall include items listed in Finding No. 25).

The *Sewer System Master Plan* shall include a water balance for both the current inflow and projected flows through at least the year 2022, and shall clearly show the times of the year when wastewater must be stored versus when it may be applied to land. The water balance shall evaluate the wastewater storage reservoir's ability to provide sufficient capacity to maintain two feet of freeboard on a month-by-month basis. The water balance shall be based on all flows entering the wastewater system, 100-year annual precipitation returns, and compliance with the two-foot freeboard requirement in treatment ponds and storage reservoir. All assumptions and calculations used in preparing the water balance must be clearly identified. The water balance shall include consideration of at least the following:

- a. Wastewater flows from all sources such as subsurface inflows, storm water run-on, and any inflow and infiltration from the collection system;
- b. Local precipitation data (indicate what weather station was used to obtain the data, and indicate what the total annual precipitation is for average and 100 year annual storm events, and show how that value was distributed throughout the year, by months, based on historical rainfall patterns);
- c. Infiltration and inflow;
- d. Local evaporation data;
- e. Measured evaporation data from any enhanced evaporation system;
- f. Projected percolation rates for the effluent storage reservoir; and
- g. Irrigation disposal rates that comply with the requirements of the WDRs.

The *Sewer System Master Plan* shall include a proposed timeline for all improvements.

- 13. By **1 June 2007**, the Discharger shall enroll in the State Water Resources Control Board's Sanitary Sewer Overflow General Order described in Finding No 28.

Report of Waste Discharge

- 14. By **1 October 2008**, the Discharger shall submit a *Report of Waste Discharge* (RWD) to allow WDRs to be revised to reflect the proposed upgrades in the Sewer System Master Plan. The RWD consists of the Form 200 (*Application for Report of Waste Discharge*) and a technical report that addresses all items listed in Attachment B to this Order, "*Additional Information Requirements for a Report of Waste Discharge*." The Report of Waste Discharge shall clearly reference the groundwater monitoring data collected for the sprayfields and shall demonstrate that the proposed improvements are compliant with State Water Resources Control Board Resolution No. 68-16 (the Antidegradation Policy).

Progress Reports

15. **Beginning with the second quarter 2007**, the Discharger shall submit a *Quarterly Compliance Status Report*. These reports shall describe all work completed during the calendar quarter to comply with this Cease and Desist Order; and any new, modified, or renovated component of the collection, treatment, storage, and disposal system. The reports shall specifically address work completed to identify and reduce I/I. These reports shall be submitted by the **1st day of the second month after the quarter (e.g., the first quarterly report is due by 1 May of each year)**.

Sewage Connection Restriction

16. Connections to the sewage collection system by households or businesses that did not have a building permit approved prior to the 18 January 2007 Public Hearing Notice are prohibited.
17. The following may be excluded from the sewage connection restriction upon a project-specific determination of eligibility by the Regional Water Board:
- Projects which normally do not require a building permit and for which construction commenced prior to the 18 January 2007 Public Hearing Notice;
 - Projects which would eliminate discharges from existing dwellings which have failing systems whose threat to water quality or public health is greater than that of the existing collection system; and
 - Projects that would alleviate an extreme public hardship or public health problem.
18. The sewage connection restriction will remain in effect until removed by the Regional Water Board. The Regional Water Board may remove the restriction upon finding that the violations of requirements which were the basis for imposing the restriction have ceased and consistent compliance with those requirements has been achieved.
19. The Regional Water Board may, prior to removing the sewage connection restriction, grant a limited exception to allow additional connections to the sewage collection system upon finding that the Discharger has met the following conditions:
- Consistent compliance with requirements can be achieved only by construction of a facility which will take a substantial period of time to complete;
 - The Discharger has the capacity, authority, and financial resources to complete the corrective measures necessary to achieve compliance and is currently proceeding with such corrective measures;
 - The corrective measures necessary to achieve compliance will be completed and placed into operation by the Discharger in the shortest practicable time;
 - All practicable interim repairs and improvements which can be made have been made; and
 - During the interim period of time until compliance with requirements can be fully achieved, the discharge will be managed, operated, maintained and repaired so as to reduce to a minimum the violations which resulted in the imposition of the connection restriction, and that such minimum violations for the interim period of time involved will not significantly impair water quality or beneficial uses.

20. The Regional Water Board shall, upon finding that the above conditions are no longer met by the Discharger, revoke the limited exception as discussed in Ordered Item No. 19 and re-impose the sewage connection restriction.

In addition to the above, the Discharger shall comply with all applicable provisions of the California Water Code that are not specifically referred to in this Order. As required by the California Business and Professions Code Sections 6735, 7835, and 7835.1, all technical reports shall be prepared by, or under the supervision of, a California Registered Engineer or Professional Geologist and signed/stamped by the registered professional.

If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability.

Failure to comply with this Order or with the WDRs may result in the assessment of Administrative Civil Liability of \$1,000 to \$10,000 per day of violation, depending on the violation, pursuant to the California Water Code, including sections 13268, 13350 and 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on _____.

PAMELA C. CREEDON, Executive Officer

Attachments on following page

Attachment A - Summary of Spills from October 1998 through 2006

Attachment B - Additional Information Requirements for a Report of Waste Discharge

GJC/MRL/WSW: 18 January 2007

ATTACHMENT A

CEASE AND DESIST ORDER AND CONNECTION RESTRICTION

FOR

CITY OF LAKEPORT MUNICIPAL SEWER DISTRICT

WASTEWATER TREATMENT FACILITY

LAKE COUNTY

The following table summarizes the wastewater spills that have occurred (as documented in the Regional Water Board case file) since adoption of the Waste Discharge Requirements in October 1998 through the issuance of this Draft Cease and Desist Order.

Date of Spill	Volume Discharged (Gallons)	Discharge to Surface Water Drainage Course?	Type of Waste	Location of Spill	Cause of Spill¹
29 Oct 1998	>325,900	Yes	Partially Treated Effluent	2400 Linda Lane & Parallel Drive	Recapture pond gate partially open because pond was full and overflowing due to storm water flow into the pond
23 Nov 1998	400	Yes	Partially Treated Effluent	Disposal Site	Overflow from recapture pond caused during installation of plastic pipe in earthen berm
29 Dec 1998	100	Yes	Raw Sewage	420 2 nd Street	Blockage in sewer lateral
30 Dec 1998	75	No	Raw Sewage	375 High Street	Plugged sewer lateral
16 Jan 1999	30	No	Raw Sewage	975 Armstrong and Russell Street	Blockage in sewer lateral
28 Jan 1999	50	No	Raw Sewage	635 11 th and Main Streets	Blockage in sewer lateral
31 Jan 1999	20	No	Raw Sewage	40 th and South Main Street	Plugged sewer service lateral
17 Feb 1999	50	Yes	Raw Sewage	475 Third Street and Tunis Ave.	Blockage in main sewer line
4 Mar 1999	30	Yes	Raw Sewage	825 Forbes	Roots in sewer lateral
13 Mar 1999	25	No	Raw Sewage	450 Hillcrest and Forest	Plugged sewer lateral
19 Apr 1999	30	Yes	Raw Sewage	480 Third Street and Tunis Ave.	Blockage in sewer lateral
23 June 1999	1,500	Yes	Raw Sewage	1940 Lakeshore Drive and Giselman	Blockage in main sewer line
18 Nov 1999	20	No	Raw Sewage	2235 Heulton Circle	Plugged sewer lateral

Attachment A of Cease and Desist Order and Connection Restriction
City of Lakeport Municipal Sewer District
Wastewater Treatment Facility
Lake County

- 2 -

Date of Spill	Volume Discharged (Gallons)	Discharge to Surface Water Drainage Course?	Type of Waste	Location of Spill	Cause of Spill¹
19 March 2000	75 to 100	No	Raw Sewage	Tunis Street between 2 nd and 3 rd Streets	Plugged sewer main
24 March 2000	25	No	Raw Sewage	480 3 rd Street	Plugged sewer main
13 April 2000	50	No	Raw Sewage	475 3 rd Street	Plugged sewer main
21 April 2000	50	No	Raw Sewage	210 11 th Street	Plugged sewer lateral
16 May 2000	200	No	Raw Sewage	16 th and 17 th Streets	Debris blockage in sewer manhole
30 May 2000	30	No	Raw Sewage	Pecham Street	Blockage in sewer main
5 June 2000	25	Yes	Raw Sewage	1824 Via Del Cabana	Plugged sewer lateral
8 Sept 2000	50	No	Raw Sewage	155 South Forbes	Plugged sewer line cleanout
15 Nov 2000	100	Yes	Raw Sewage	Via Delago & Via Del Cabana	Blockage in sewer main
15 Nov 2000	150	Yes	Raw Sewage	1880 High Street	Blockage in sewer main
25 Dec 2000	50	No	Raw Sewage	224 2 nd Street	Blockage in sewer main
9 Jan 2001	25	Yes	Raw Sewage	Peckham & South Main	Blockage in sewer main
9 Feb 2001	25	No	Raw Sewage	Parallel & Craig	Blockage in sewer main
23 Feb 2001	25	Yes	Raw Sewage	426 2 nd Street	Plugged sewer main
23 Feb 2001	30	Yes	Raw Sewage	2019 South Main	Plugged sewer main
23 July 2001	30	Yes	Raw Sewage	Via Delago & Del Cabana	Blockage in sewer main
8 Oct 2001	10	No	Raw Sewage	425 3 rd and Tunis Street	Plugged sewer main
9 Oct 2001	25	Yes	Raw Sewage	975 North Brush Street	Plugged sewer lateral
26 Nov 2001	25	Yes	Raw Sewage	1130 Mellor Street	Root blockage in sewer lateral
28 Feb 2002	40	Yes	Raw Sewage	475 Tunis Street	Blockage in sewer main
11 Mar 2002	25	No	Raw Sewage	480 3 rd Street	Blockage in sewer main

Date of Spill	Volume Discharged (Gallons)	Discharge to Surface Water Drainage Course?	Type of Waste	Location of Spill	Cause of Spill¹
30 April 2002	25	No	Raw Sewage	475 Tunis Street	Plugged sewer main
12 May 2002	20	No	Raw Sewage	1264 Craig Ave	Plugged sewer lateral
12 May 2002	10	No	Raw Sewage	1155 North Forbes	Plugged sewer lateral
25 June 2002	100	Yes	Raw Sewage	1425 North Main Street	Power failure to the pumps and controls
7 July 2002	50	No	Raw Sewage	1264 Craig Street	Plugged sewer lateral
17 July 2002	25	No	Raw Sewage	1155 North Forbes Street	Plugged sewer lateral
13 Sept 2002	15	No	Raw Sewage	2235 Heaton Circle	Plugged sewer main
4 Oct 2002	20	Yes	Raw Sewage	100 North Main Street	Plugged sewer main
29 Oct 2002	50	No	Raw Sewage	992 19 th Street	Blockage in sewer main
1 Nov 2002	50	No	Raw Sewage	1021 24 th Street	Blockage in sewer main
8 Nov 2002	5	No	Raw Sewage	360 Third Street	Blockage in sewer lateral
13 Nov 2002	25	No	Raw Sewage	210 11 th Street	Plugged sewer cleanout
18 Dec 2002	10	No	Raw Sewage	15 th and High Street	Blockage in sewer main
10 Jan 2003	20	No	Raw Sewage	785 6 th Street	Roots in sewer lateral
27 Jan 2003	300	Yes	Raw Sewage	755 11 th Street	Blockage in sewer main
29 Jan 2003	25	Yes	Raw Sewage	Clearlake Ave & Main Street	Leaking valve cover
20 Feb 2003	500	Yes	Raw Sewage	6 th Street	Grease blockage in sewer main
24 Feb 2003	50	Yes	Raw Sewage	High and 20 th Streets	Grease blockage in sewer main
18 Oct 2003	15	Yes	Raw Sewage	195 South Main Street	Plugged sewer line
18 Oct 2003	15	Yes	Raw Sewage	235 South High Street	Plugged sewer line
27 Oct 2003	66,000	Yes	Raw Sewage	2485 Parallel Drive	Power failure and standby generator running out of fuel

Date of Spill	Volume Discharged (Gallons)	Discharge to Surface Water Drainage Course?	Type of Waste	Location of Spill	Cause of Spill¹
18 Nov 2003	1,400	Yes	Raw Sewage	320 16 th Street	Grease blockage in sewer line
24 Nov 2003	25	No	Raw Sewage	470 2 nd Street	Plugged sewer main
30 Nov 2003	30	No.	Raw Sewage	867 14 th Street	Plugged sewer lateral
15 Dec 2003	100	Yes	Raw Sewage	180 6 th Street	Partially blocked sewer main
18 Dec 2003	100	Yes	Raw Sewage	180 6 th Street	Partially blocked sewer main
29 Dec 2003	100	Yes	Raw Sewage	1005 North Main	Heavy rains and I/I problems
13 Mar 2004	15	No	Raw Sewage	975 Armstrong Ave.	Blockage in sewer lateral
19 July 2004	20	No	Raw Sewage	1155 North Forbes Street	Blockage in sewer lateral
31 Dec 2005	500	Yes	Raw Sewage	1100 North Main	I/I problems, grease blockage, undersized section of sewer pipe
13 – 24 April 2006	3,600,000 to 6,623,250	Yes	Partially Treated Effluent	Land Application Area	Excessive rains, I/I and storage capacity problems, flooding of sewer cleanouts at Willow Point RV Park
26 Oct 2006	200	Yes	Raw Sewage	Villa Del Lago and Via Del Cabana	Grease blockage in sewer line
9 Nov 2006	90	No	Raw Sewage	Lakeport Unified School District	Backup in manhole due to vandalism

¹Based on Discharger's spill reports.

ATTACHMENT B

ADDITIONAL INFORMATION REQUIREMENTS FOR A REPORT OF WASTE DISCHARGE CITY OF LAKEPORT MUNICIPAL SEWER DISTRICT WASTEWATER TREATMENT FACILITY

Provide a technical report prepared by a California Registered Civil Engineer that presents the following information:

1. A narrative description of all wastewater conveyance, treatment, and disposal systems currently existing at the facility.
2. A narrative description of all planned physical improvements, their purpose, and anticipated completion dates. If phased build out is planned provide scope and completion dates for each phase.
3. A process flow diagram, scaled treatment plant site plan, and scaled map(s) showing all existing and proposed effluent disposal areas (including conveyance and tailwater control systems).
4. For each pond and other waste containment structure, provide the following information. Discuss both existing and proposed ponds:
 - a. Identification (name) and function of the pond;
 - b. Surface area, depth, and volumetric capacity at two feet of freeboard;
 - c. Height (relative to surrounding grade), crest width, interior slope, and exterior slope of each berm or levee;
 - d. Materials used to construct each berm or levee;
 - e. Description of engineered liner, if any;
 - f. Estimated steady state percolation rate for each unlined pond;
 - g. Depth to shallow groundwater below the planned base of the ponds;
 - h. Overfilling/overflow prevention features; and
 - i. Operation and maintenance procedures.
5. For each reclamation site, provide:
 - a. Complete ownership information.
 - b. A scaled map showing the topography, property boundary, streets, residences, surface waters, etc. A USGS topo map may be sufficient as a base map.
 - c. A scaled map showing the limits of the reclamation areas, reclaimed water conveyance systems, other irrigation water conveyance systems, on-site drainage, tailwater systems, and runoff controls (existing and proposed).

- d. Net irrigation area.
 - e. Method(s) of irrigation, including typical frequency and depths of application for each month when irrigation will occur.
 - f. Typical cropping practices (crops grown, rotation cycles, use of fertilizers and pesticides, etc.).
 - g. Typical storm water management practices.
- 6. A description of the sources and types of wastewater flowing into the wastewater treatment system, design flow rates, and the design capacity of the system (existing and proposed). Include projected infiltration/inflow rates and peaking factors used in design calculations.
 - 7. A description of emergency wastewater storage facilities or other means of preventing system bypass or failure during reasonably foreseeable overload conditions (e.g., power failure, sewer blockage, and illicit sewer discharges). Consider both potential problems at the plant and within the community sewer system.
 - 8. A description of the community sewer system: materials, age, infiltration/inflow estimate, and lift station details (type, location, capacity, backup systems, and alarm features).
 - 9. Chemical characterization of influent wastewater quality, including biochemical oxygen demand, total suspended solids, total dissolved solids, and nitrogenous compounds. Include a discussion of seasonal variations, if any, and supporting analytical data.
 - 10. A description of all known or anticipated industrial dischargers whose individual BOD, total dissolved solids and/or hydraulic loads will be greater than 2% of the plant's total daily influent loading, including the following:
 - a. Name;
 - b. Industry;
 - c. Nature of waste stream;
 - d. Average daily flow (gpd and percentage of total plant loading);
 - e. Peak daily flow;
 - f. Average daily BOD loading (lb/day and percentage of total plant loading);
 - g. Peak daily BOD loading;
 - h. Salinity (e.g., total dissolved solids, electrical conductivity, major ions);
 - i. Nitrogen (all forms);
 - j. Nature of seasonal or diurnal variations in influent flow or quality, if any; and
 - k. Pre-treatment or self-monitoring programs, if any.

11. A description of the following for the both existing system and each phase of the proposed expansion:

- a. Average dry weather flow;
- b. Peak wet weather flow; and
- c. Effluent quality at the point of discharge to the disposal system (BOD, total suspended solids, settleable matter, nitrogenous compounds, electrical conductivity, pH, and total coliform organisms).

12. Narrative description of expected solids generation rates and handling/storage procedures:

- a. Debris;
- b. Grit and screenings; and
- c. Biosolids.

13. Narrative description of proposed solids disposal practices for debris, grit, screenings, and biosolids:

- a. Method of disposal;
- b. Frequency of disposal;
- c. Disposal site/area name(s) and location(s); and
- d. For biosolids (if beneficial re-use is proposed for reclamation sites):
 - Land application rates (dry tons per unit area per application, number of applications per year);
 - Soil incorporation practices;
 - Vegetation grown;
 - Runoff controls, if any; and
 - Public access controls.

14. A description of the types of soil underlying any planned ponds and effluent disposal areas (include a copy of the geotechnical report).

15. Projected monthly water balance for each phase of buildout demonstrating adequate containment capacity for the 100-year return period total annual precipitation, including consideration of at least the following.

- a. A minimum of two feet of freeboard in each pond at all times;
- b. Historical local evaporation data (monthly average values);
- c. Local precipitation data with the 100-year return period annual total distributed monthly in accordance with mean monthly precipitation patterns;
- d. Proposed wastewater loading rates distributed monthly in accordance with expected seasonal variations;

- e. Projected long-term percolation rates (including consideration of percolation from unlined ponds and the effects of solids plugging on all ponds); and
 - f. Projected irrigation usage rates (if recycling is proposed).
16. Proposed flow limits and basis for the limit for the current facility and each phase of the planned expansion. Consider dry weather flows vs. peak flows and seasonal variations associated with major industrial dischargers. Include the technical basis for the proposed flow limit (e.g., design treatment capacity; hydraulic capacity of a main lift station, headworks, or other system element; and demonstrated effluent disposal capacity).
17. A narrative description of plant operation and maintenance procedures to be employed, including those associated with effluent storage and disposal.
18. A description of any policies or facility design features that reduce the potential for groundwater degradation (best practicable treatment and control or BPTC measures). Such features might include industrial discharger effluent quality limits, prohibitions on discharge of certain types of waste, advanced treatment, disinfection, concrete treatment structures, and pond lining systems.
19. Provide a technical report prepared by a Professional Geologist or Certified Hydrogeologist that provides an assessment of the following:
- a. Baseline groundwater quality at each new disposal or reclamation site.
 - b. Groundwater degradation, if any, that has resulted from the existing operation; and
 - c. The potential for the proposed effluent disposal expansion to degrade groundwater quality (at the plant and at reclamation/disposal sites).

This assessment must be made based on site-specific data and must provide technically-based answers to the following questions based on historical data and supplemental data to be collected for the purpose of this study:

- ◆ What is the groundwater elevation and gradient at the existing facility? At least one new well will be required to better define background groundwater quality outside the influence of any mounding around the ponds and at least one more well will be required downgradient of the existing ponds.
- ◆ What is background shallow groundwater quality for typical municipal waste constituents? Compare to established water quality objectives for protection of the beneficial uses of groundwater.¹
- ◆ What is the groundwater quality data downgradient of the existing WWTP and application areas.

¹ Include analyses for the following: BOD, total coliform organisms, total dissolved solids, ammonia (as N), total Kjeldahl nitrogen, nitrate (as N), nitrite (as N), and a complete anion/cation scan with ion balance. Total coliform organisms shall be determined using the 15- or 25- tube method.

- ◆ For each monitored constituent, has the existing facility degraded groundwater quality? If so:
 - What constituents exceed the applicable water quality objective?
 - What constituents exceed background concentrations?
 - Based on site hydrogeology, is the degradation contained within a defined area (or one that could be defined by additional investigation)?
 - What Best Practicable Treatment and Control (BPTC) methods will be utilized to minimize the degradation?
- ◆ What are subsurface conditions at the proposed new disposal sites?²
- ◆ What is the character of groundwater quality at the proposed new disposal sites?²
- ◆ Based on site hydrogeology, the nature of the waste, and the proposed disposal method, what level of degradation is expected to result from the expansion (if any)?
- ◆ If the proposed expansion will cause degradation, how will the degradation be confined or controlled?
- ◆ At a minimum, the report shall include the following:
 - Rationale for field investigation approach.
 - Description and documentation of all proposed investigational methods and activities.
 - Description of the site hydrogeology including stratigraphy, hydraulic conductivity of the soils, capillary rise, groundwater elevation and gradient, transmissivity, and influence of all recharge and pumping sources (i.e., a site conceptual model)
 - A detailed map showing locations of all water wells including springs and isolated wetlands within one mile of the WWTP and land application areas.
 - Description of fate and transport mechanisms for all monitored constituents.
 - Description of data reduction/analysis techniques and results.
 - Presentation of historical and supplemental site-specific soil and groundwater data.
 - Comparison of groundwater quality data to background groundwater quality and water quality objectives for each constituent.
 - An analysis of all data and conclusions regarding each of the above questions.

² This must be based on subsurface investigation at the proposed disposal site including soil borings and/or cone penetrometer tests and groundwater analyses. Groundwater samples may be obtained using a one-time sampling method such as Hydropunch®.

Exhibit B

Exhibit B

1 CHRISTOPHER J. CARR (CA SBN 184076)

Email: CCarr@mofo.com

2 SHAYE DIVELEY (CA SBN 215602)

Email: SDiveley@mofo.com

3 MORRISON & FOERSTER LLP

425 Market Street

4 San Francisco, California 94105-2482

Telephone: 415.268.7000

5 Facsimile: 415.268.7522

6 Attorneys for Petitioners

SCHELLINGER HOMES

8 BEFORE THE

9 STATE WATER RESOURCES CONTROL BOARD

10
11 IN THE MATTER OF THE PETITION OF

12 SCHELLINGER HOMES

13 California Regional Water Quality Control Board,
14 Central Valley Region

SWRCB OCC File No.

**REQUEST FOR PREPARATION
OF ADMINISTRATIVE RECORD**

15
16 TO THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD:

17
18 Petitioners SCHELLINGER HOMES ("SCHELLINGER") hereby request that the Central
19 Valley Regional Water Quality Control Board ("Regional Board") prepare and send the
20 administrative record for the Notice ("Notice") concerning Cease and Desist Order and
21 Connection Restriction for City of Lakeport Municipal Sewer District Wastewater Treatment
22 Facility, Lake County ("Draft Order"), dated January 18, 2007. This Notice prohibits (effective
23 immediately) the connection of any new structure to the sewage collection system except those
24 authorized by a building permit (or equivalent final local agency approval) issued prior to the
25 effective date of the Notice. Schellinger is petitioning the State Water Board for review of the
26 Regional Board's Notice and, particularly, its connection prohibition.

27 The administrative record should include full and complete copies of all correspondence,
28 memoranda, and records of communication pertaining to the Regional Board's issuance of its

REQUEST FOR PREPARATION OF ADMINISTRATIVE RECORD

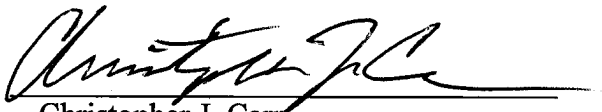
sf-2272275

1 January 18, 2007, Notice, the Draft Order, and/or consideration of it. This should include the full
2 administrative record associated with the Regional Board's meetings and hearings relating to or
3 discussing the Lakeport Municipal Sewer District Wastewater Treatment Facility, including full
4 and complete copies of all reports, correspondence, memoranda, records of communication,
5 hearing transcripts, testimony, documents, exhibits and other material submitted by the Regional
6 Board staff, the City of Lakeport, Schellinger and/or the public:

7 These materials are relevant and material to the grounds for Schellinger's Petition.

8
9 Dated: February 20, 2007

CHRISTOPHER J. CARR
SHAYE DIVELEY
MORRISON & FOERSTER LLP

11
12 By: 
Christopher J. Carr

13 Attorneys for Petitioners
14 SCHELLINGER HOMES
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1 **PROOF OF SERVICE**

2 I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address
3 is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause,
4 and I am over the age of eighteen years.

5 I further declare that on February 20, 2007, I served a copy of:

6 **PETITION FOR REVIEW AND REQUEST FOR HEARING;
7 REQUEST FOR IMMEDIATE STAY**

8 ☐ **BY FACSIMILE [Code Civ. Proc sec. 1013(e)]** by sending a true copy from Morrison & Foerster
9 LLP's facsimile transmission telephone number 415.268.7522 to the fax number(s) set forth below, or
10 as stated on the attached service list. The transmission was reported as complete and without error.
11 The transmission report was properly issued by the transmitting facsimile machine.

12 I am readily familiar with Morrison & Foerster LLP's practice for sending facsimile transmissions,
13 and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s)
14 described above will be transmitted by facsimile on the same date that it (they) is (are) placed at
15 Morrison & Foerster LLP for transmission.

16 ☒ **BY U.S. MAIL [Code Civ. Proc sec. 1013(a)]** by placing a true copy thereof enclosed in a sealed
17 envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at
18 Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482 in accordance
19 with Morrison & Foerster LLP's ordinary business practices.

20 I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of
21 correspondence for mailing with the United States Postal Service, and know that in the ordinary
22 course of Morrison & Foerster LLP's business practice the document(s) described above will be
23 deposited with the United States Postal Service on the same date that it (they) is (are) placed at
24 Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.

25 ☐ **BY OVERNIGHT DELIVERY [Code Civ. Proc sec. 1013(d)]** by placing a true copy thereof
26 enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by
27 UPS, at 425 Market Street, San Francisco, California 94105-2482 in accordance with Morrison &
28 Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of
correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster
LLP's business practice the document(s) described above will be deposited in a box or other facility
regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to
receive documents on the same date that it (they) is are placed at Morrison & Foerster LLP for
collection.

29 ☐ **BY PERSONAL SERVICE [Code Civ. Proc sec. 1011]** by placing a true copy thereof enclosed in
30 a sealed envelope addressed as follows for collection and delivery at the mailroom of Morrison &
31 Foerster LLP, causing personal delivery of the document(s) listed above to the person(s) at the
32 address(es) set forth below.

I am readily familiar with Morrison & Foerster LLP's practice for the collection and processing of
documents for hand delivery and know that in the ordinary course of Morrison & Foerster LLP's
business practice the document(s) described above will be taken from Morrison & Foerster LLP's
mailroom and hand delivered to the document's addressee (or left with an employee or person in
charge of the addressee's office) on the same date that it is placed at Morrison & Foerster LLP's
mailroom.

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☒ **BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6]** by electronically mailing a true and correct copy through Morrison & Foerster LLP's electronic mail system to the e-mail address(s) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6.

State Water Resources Control Board
Office of Chief Counsel
Attention: Dolores White
Staff Services Analyst
P.O. Box 100
Sacramento, CA 95812-0100
Email: *dwhite@waterboards.ca.gov*

☒ Email
☐ Fax
☒ U.S. Mail
☐ Overnight
☐ Personal

Mark Brannigan
City of Lakeport Municipal Sewer District
City of Lakeport Corporation Yard
591 Martin Street
Lakeport, CA 95453

☐ Email
☐ Fax
☒ U.S. Mail
☐ Overnight
☐ Personal

Guy Childs
Central Valley Regional Water Quality
Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

☐ Email
☐ Fax
☒ U.S. Mail
☐ Overnight
☐ Personal

Pamela C. Creedon
Executive Officer
Central Valley Regional Water Quality
Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

☐ Email
☐ Fax
☒ U.S. Mail
☐ Overnight
☐ Personal

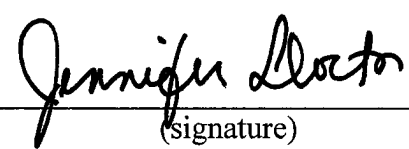
Richard Knoll
Acting City Manager
Lakeport Community Development Department
225 Park Street
Lakeport, CA 95453

☐ Email
☐ Fax
☒ U.S. Mail
☐ Overnight
☐ Personal

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California on February 20, 2007.

Jennifer P. Doctor
(typed)


(signature)